

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N-S-

Petitioner

vs.

Laura HERMOSILLO, Seattle Field
Office Director, U.S. Immigration and
Customs Enforcement (ICE), Bruce SCOTT,
Warden, Northwest ICE Processing Center;
Kristi NOEM, Secretary
of Homeland Security, Pamela
BONDI, Attorney General, Todd
LYONS, Acting Director of
Immigration and Customs Enforcement,
U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,
U.S. DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

Respondents

) Case No. 2:26-cv-00161-BAT

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)
)
) **PETITIONER'S TRAVERSE AND
RESPONSE IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS**

) **NOTE ON MOTION CALENDAR: February
4, 2026**

PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-I

Case No. 2:26-cv-00161-BAT

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INTRODUCTION

1. Respondents ask this Court to endorse a system where a person's liberty can be revoked on the whim of an enforcement officer, utilizing deception rather than due process. Petitioner N-S- was not a fugitive; he was a compliant participant in the Intensive Supervision Appearance Program (ISAP) who reported faithfully for nearly two years. Yet, rather than providing notice of an alleged violation or a hearing before a neutral decisionmaker, ICE agents utilized a ruse—falsely claiming his monitoring device was "malfunctioning"—to lure him to a location for arrest.
2. Respondents now attempt to justify this re-detention by citing Petitioner's prior travel to Texas. But this post-hoc justification fails to explain why, if such travel presented a flight risk, ICE merely placed a bracelet on him at the time rather than detaining him. ICE's decision to manage that risk with a bracelet, only to months later use a trick about that very bracelet to arrest him, underscores the arbitrary nature of the government's unilateral decision-making.
3. Due process demands that before the government strips a person of their liberty, it must provide notice and a hearing before a neutral decisionmaker to determine if detention is actually warranted. *See E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025). Because Respondents failed to provide this basic constitutional safeguard, Petitioner's continued detention is unlawful. This Court should grant the writ and order his release.

II. ARGUMENT

A. Regulatory Discretion Does Not Override Constitutional Due Process: Due process requires a pre-deprivation hearing before re-detention.

The Supreme Court has explicitly held that even where a parole statute grants "broad discretion" to revoke release, the Liberty Interest protected by the Due Process Clause still mandates a hearing. *Morrissey v. Brewer*, 408 U.S. 471, 480–82 (1972). The Government cannot regulate away the Fifth Amendment. Whether 8 C.F.R. § 1236.1(c)(9) explicitly *requires* a danger finding is irrelevant; the *Constitution* requires it to ensure that the deprivation of liberty is not arbitrary.

Petitioner's central claim is that prior to re-detention, due process required ICE to demonstrate by clear and convincing evidence that Petitioner violated their conditions of release so as to now pose a flight risk or danger to the community. *See, e.g.*, Dkt. 1 ¶¶ 44–54. Courts around the country have repeatedly and resoundingly held that due process requires exactly this protection. *See, e.g., E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025) (granting habeas petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing prior to any future re-detention); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404- JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025) (same); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025) (same); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (granting TRO and ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *7 (N.D. Cal.

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1 July 24, 2025) (granting preliminary injunction and ordering that petitioner not be re-detained
2 without a pre-deprivation hearing before a neutral immigration judge where the government
3 must demonstrate by clear and convincing evidence that she is a flight risk or danger); *Duong v.*
4 *Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025) (same).

5 Respondents do not dispute this precedent but rather argue that these courts reached
6 those decisions in error, claiming that 8 C.F.R. § 1236.1(c)(8) imposes no regulatory
7 requirement for due process and so none exists. *See* Respondents' Return Memorandum pg 6.
8 Respondents misread the aforementioned decisions. In issuing its decision in *Wamsley*, this
9 court did not "erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8)."
10 Rather, this and other courts have found that individuals in the Petitioner's position have a
11 liberty interest under the Due Process Clause of the Fifth Amendment to the United States
12 Constitution.

13 Likewise, Respondents' reliance on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA
14 2025) is misplaced. That decision addresses the statutory interpretation of 'admission' for
15 asylum seekers. It does not—and cannot—override the constitutional Due Process requirements
16 for revoking an established liberty interest. As this Court held in *E.A.T.-B.*, once the
17 Government grants release, it creates a liberty interest that requires Due Process protections to
18 revoke. An administrative BIA decision cannot strip a Petitioner of constitutional protections.
19 *Id.*

20 Respondents argue that because Petitioner is subject to "mandatory detention," a hearing
21 on flight risk is immaterial. This is circular reasoning. Petitioner was *released* from that
22 detention. To return him to custody, the Government must first establish a valid basis for
23 revocation. If the alleged violation was merely a technical error or a misunderstanding—facts

1 that can only be established at a hearing—then the justification for returning him to mandatory
 2 status collapses. Detention must bear a “reasonable relation” to its purpose. *Zadvydas v. Davis*,
 3 533 U.S. 678, 690 (2001). If Petitioner is not a flight risk or danger, re-detaining him serves no
 4 legitimate government purpose.

5 Respondents argue that if a hearing is required, the standard should be a mere
 6 “preponderance of the evidence.” Respondents’ Return at pg 9. This is not the standard the
 7 Supreme Court has held applies in hearings where Due Process is implicated. The Supreme
 8 Court has held that in civil commitment proceedings—which characterize immigration
 9 detention—Due Process requires the Government to prove its case by “clear and convincing
 10 evidence.” *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (applying the Supreme
 11 Court’s civil commitment standard from *Addington v. Texas* to immigration detention); *see also*
 12 *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (reaffirming that Due Process
 13 requires the clear and convincing standard for bond determinations). As the court in *Garro*
 14 *Pinchi* recently held, permitting detention on a lower standard would violate the fundamental
 15 protections against arbitrary deprivation of liberty.

16 In the above-cited cases, courts found that the government cannot regulate away an
 17 individual’s due process rights. This case is no different, and accordingly, the Court should grant
 18 the habeas petition.

19 **B. The *Mathews* Test Dictates that Due Process Was Violated.**

20 As this Court held in *Wamsley*, the constitutionality of re-detention is evaluated under the
 21 *Mathews v. Eldridge*, 424 U.S. 319 (1976), test. All three factors weigh heavily in Petitioner’s
 22 favor.

23 **1. Petitioner’s private interest is weighty.** Respondents argue that because Petitioner’s

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1 release was "conditional," he has no liberty interest. This ignores decades of Supreme
 2 Court precedent. "Freedom from imprisonment... lies at the heart of the liberty protected
 3 by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even
 4 conditional release creates a liberty interest that cannot be terminated without due
 5 process. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Petitioner lived freely with his
 6 spouse in Vancouver, WA for nearly two years. His interest in remaining free while he
 7 pursues his asylum claim is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*,
 8 542 U.S. 507, 529 (2004).

9 **2. The Risk of Erroneous Deprivation is High.** The facts of this case perfectly illustrate
 10 the high risk of error when detention decisions are left to the unilateral discretion of
 11 enforcement officers.

12 ○ **Arbitrary Enforcement:** Respondents cite Petitioner's travel to Texas as a
 13 violation justifying detention. Yet, the record shows ICE addressed this very
 14 travel months ago by placing a monitoring bracelet on Petitioner—a condition he
 15 accepted and complied with. To revoke parole months later based on conduct that
 16 ICE had already managed demonstrates the arbitrary nature of the "enforcement
 17 agent's" decision-making. *Coolidge v. New Hampshire*, 403 U.S. 443, 450
 18 (1971).

19 ○ **The "Ruse" Proves Lack of Process:** ICE agents lured Petitioner to his arrest
 20 by claiming his device was "malfunctioning.". If Petitioner was truly a flight risk,
 21 or if he had tampered with the device as Respondents now suggest, a neutral
 22 decisionmaker could have evaluated that evidence. Instead, ICE acted in the
 23 shadows, using deception to bypass the very process the Constitution requires.

- 1 ○ **Necessity of a Neutral Arbiter:** A hearing before an Immigration Judge would
2 allow Petitioner to explain that his travel was harmless, that he complied with the
3 subsequent bracelet requirement, and that he has maintained his residence.
4 Without such a hearing, the risk of erroneous deprivation is not just high—it is
5 guaranteed. *See Duong v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at 7
6 (N.D. Cal. Sept. 19, 2025).

7 **3. The Government’s Interest is Low.** Maintaining an individual in detention at
8 government expense imposes a financial burden on the government, whereas his release
9 on ISAP (with the bracelet) costs comparatively little. The government has no legitimate
10 interest in detaining a compliant asylum seeker who poses no danger to the community.
11 *See E.A.T.-B.*, 2025 WL 2402130, at 5. In their Response Memorandum, the
12 Respondents conflate the government’s interest in preventing aliens from “remaining in
13 the United States in violation of our law” with the need to deprive such individuals of
14 their liberty pending the decision as to whether they will be allowed to remain in the
15 United States. *See* Respondents’ Return Memorandum pgs 7-8. In the present case,
16 Petitioner was released from custody after Respondents had made the decision that
17 Petitioner “has a credible fear of persecution or torture.” *See* Respondents’ Exhibit A at
18 1. Respondents have provided no credible explanation for their sudden interest in
19 detaining an individual who came to this country to seek asylum, was found to have a
20 credible fear of persecution, was released from custody, subsequently applied for
21 asylum, and whose case remained pending for years.

22
23 **C. The Court Should Disregard Inadmissible Evidence.**

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1 Respondents rely on the Declaration of Deportation Officer Javier Delgado to support their
2 claims of parole violations. This declaration should be afforded little to no weight.

3 **Hearsay:** Officer Delgado's statements regarding Petitioner's alleged violations are out-of-court
4 assertions offered for the truth of the matter asserted. Fed. R. Evid. 801(c). The statements
5 concerning Petitioner's alleged failures to comply with conditions of release are inadmissibly
6 hearsay. They are unreliable—even internally—as they claim "On July 26, 2025, DHS issued a
7 warrant for Petitioner's arrest pursuant to Sections 236 and 287 of the INA." *See e.g.*, Dkt. 8 ¶
8 12. This assertion is parroted in Respondents' Return Memorandum. *See* Respondents' Return
9 Memorandum at 5, line 1. However, this statement directly contradicts Respondents' own
10 evidence, which provides that a warrant was supposedly issued for Petitioner's arrest on
11 December 26, 2025. *See* Respondents' Exhibit E at 1. The rules of evidence reflect that a
12 witness must have "personal knowledge of the matter" to which they are attesting. Fed. R. Evid.
13 602. In the present case, the purported witness's statement is not based on personal knowledge
14 and is not even supported by the Respondents' own evidence.

15 **Best Evidence Rule:** The officers summarize the contents of "DHS records and databases"
16 regarding the Texas trip and device reporting rather than providing the records themselves (e.g.,
17 the warrant that was allegedly issued on July 26, 2025, ISAP compliance logs, or
18 documentation indicating that out-of-state travel was contrary to the rules of Petitioner's
19 monitoring agreement). Under the Best Evidence Rule, the records themselves are required to
20 prove their content. Fed. R. Evid. 1002. Respondents' failure to attach the actual records
21 suggests that the records may not support the narrative presented in the declaration, as the
22 evidence that *was* provided does not support that narrative.

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1 **Errors in the Evidence Provided:** Respondents' evidence contains errors that support the
2 assertion that this Court should afford the evidence little to no weight. For example, on Page 2
3 of the Form I-213, Respondents have listed under "BASIS FOR ICE CHARGES"
4 "FRANCISCO DIEGO makes no claim to USC or LPR and is amenable to removal under
5 Section 237(a)(1)(B)..." *See* Respondents' Exhibit D at 2. The fact that Respondents' own
6 evidence references an entirely different individual strongly supports Petitioner's argument that
7 no specific, individual determination was made prior to his arrest. If the arresting officers
8 cannot distinguish Petitioner from "Francisco Diego," the Court cannot trust their assessment of
9 Petitioner's specific flight risk.

11 III. CONCLUSION

12 Each of the *Mathews* factors favors the Petitioner. The Court should therefore grant the habeas
13 petition and order that Respondents not re-detain Petitioner "until after an immigration court
14 hearing is held (with adequate notice) to determine whether detention is appropriate." *E.A.T.B.*,
15 2025 WL 2402130, at *6.

23 DATED: February 4, 2026

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